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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,182	10/06/2005	Richard Walmsley	30276/04003	2405
24024 7590 09/24/2007 CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			EXAMINER PRITCHETT, JOSHUA L	
			ART UNIT 2872	PAPER NUMBER
			MAIL DATE 09/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/519,182

Applicant(s)

WALMSLEY, RICHARD

Examiner

Joshua L. Pritchett

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This action is in response to Preliminary Amendment filed December 21, 2004. Claims 3-6 and 8-12 were amended and claims 15 and 16 were cancelled as requested by the applicant.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka (US 5,631,762).

Regarding claim 1, Kataoka discloses a laser generating means (1) for generating a primary laser beam multiple beam formation means (7) for forming at least two secondary laser beams from the primary beam for irradiating the treatment area (Fig. 2) wherein multiple beam formation means form the secondary beams by constructive and destructive interference (col. 4 lines 16-22).

Regarding claim 2, Kataoka discloses the secondary beams are formed having predetermined spacing between the beams (Fig. 2).

Regarding claim 3, Kataoka discloses the secondary beams are formed having predetermined individual intensities (Fig. 8).

Regarding claim 4, Kataoka discloses the secondary beams are formed having predetermined individual spot sizes and distributions (Fig. 2; col. 4 lines 13-16).

Regarding claim 5, Kataoka discloses the multiple beam formation means includes a diffractive element (col. 4 lines 16-22).

Regarding claim 7, Kataoka discloses the diffractive element is a transmission grating (Fig. 2).

Regarding claim 12, Kataoka discloses use for inclusion (Fig. 2).

Regarding claim 13, Kataoka discloses forming at least two secondary laser beam from a first primary beam by constructive and destructive interference (Fig. 2) and positioning the secondary beams at a predetermined distance and orientation relative to the treatment area (Fig. 2) irradiating the treatment area with the secondary beams for a predetermined time (Fig. 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 6, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka (US 5,631,762).

Regarding claim 6, Kataoka teaches the invention as claimed but lacks reference to a reflection grating. It is extremely well known in the art to place a reflector behind a transmissive grating to convert the transmissive grating into a reflective grating. Official Notice is taken. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Kataoka invention include a reflective grating for the purpose of reflecting diffracted light to fold the beam path.

Regarding claims 9 and 14, Kataoka teaches the invention as claimed but lacks reference to lymphoedema. It is well known in the art to use laser beams to treat lymphoedema (current specification page 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Kataoka invention used to treat lymphoedema as is known in the art for the purpose of effectively treating the patient while reducing the risk of damage to the skin.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka (US 5,631,762) in view of Deck (US 2003/0043380).

Kataoka teaches the invention as claimed but lacks reference a holographic element. Deck teaches that diffractive gratings and holographic elements are functional equivalents (para. 0034). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Kataoka invention include a holographic element as taught by Deck because a diffractive element and a holographic element are equivalents.

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Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka (US 5,631,762) in view of Tesslore (EP 0 130 950).

Kataoka teaches the invention as claimed but lacks reference to a frame means. Tesslore teaches a positioning means (14) for positioning the device as a predetermined distance and orientation from the treatment area (Fig. 6). Tesslore further teaches the positioning means include a frame, the frame adjustably attached to the device (Fig. 6) and when in use provides an abutment surface relative to the treatment area (Fig. 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Kataoka invention include the frame of Tesslore for the purpose of positioning the laser light on the proper position on the patients skin.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L. Pritchett whose telephone number is 571-272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephon B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joshua L Pritchett  
Examiner  
Art Unit 2872